(133)

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(S) No. 446 of 2005 (O.A. No. 2054/91)

M.P. Lipik Vargiya Shaskiya Karamchari Sangh, Jila Shakha, Sarguja, Ambikapur, Registration No.14080/84 & Others

Versus

The State of Madhya Pradesh (Now Chhattisgarh) & Others

ORDER

Post for: 15.10.2007

Sd/-
Sunil Kumar Sinha
Judge

134

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(S) No. 446 of 2005 (O.A. No. 2054/91)

APPLICANTS PETITIONERS

1 M.P. Lipik Vargiya Shaskiya Karamchari Sangh, Jila Shakha, Sarguja, Ambikapur, Registration No.14080/84

2 M.P. Laghu Vetan Karamchari Sangh, Shakha Sarguja

3 M.K. Agarwal, Son of M.P. Agarwal, aged about 32 years, resident of Sadar Road, Ambikapur, Lower Division Clerk, Office of the Dy. Director of Education, Education-District Ramanujganj, Head Quarter Ambikapur, District Sarguja.

Versus

RESPONDENTS

1 The State of Madhya Pradesh (Now Chhattisgarh), through the Secretary, Education Department, Madhya Pradesh, Bhopal.

2 Director, Public Instructions, M.P. Bhopal

3 Joint Director of Education, Sarguja, Ambikapur

4 Deputy Director of Education, Educational District Ramanujganj, Ambikapur, Sarguja

5 Sri C.L. Sahu, Deputy Director of Education, Ambikapur, Sarguja

6 The Collector, Sarguja, Ambikapur

Appearance:

Shri P.S. Koshy, counsel for the petitioners.

Shri Satish Gupta, Dy. Govt. Advocate and Ms. Sunita Jain, Panel Lawyer for respondents No. 1 to 4 & 6.

Ms. Pushpa Dwivedi and Shri V. Vijay, Advocates for the intervener.

None for respondent No.5.

---

(135)

W.P.(S) No. 446 of 2005 (O.A. No. 2054/91)

ORDER
(15.10.2007)

Following order of the Court was delivered by

Sunil Kumar Sinha, J,

(1) The petitioners have challenged the legality, validity and propriety of the order dated 11.7.91 (Annexure-P/9), by which the State (Erstwhile State of Madhya Pradesh) had taken a policy decision to shift the office of Dy. Director Education, Education District Ramanujganj, from Ambikapur, District Sarguja to Ramanujganj, District Sarguja.

(2) The brief facts are that in District Sarguja, 4 Education Districts were constituted by the erstwhile State of Madhya Pradesh as per order dated 2.9.1976. The Education District Ramanujganj is one of those Districts and its headquarters was set up at Ambikapur. This was done under certain scheme of the Government with an intention to have effective control and strengthen the functioning of the department. As per the said decision, Ramanujganj Education District constituted of Tehsil Samri and Tehsil Pal. As per the pleadings it consists of main places like Kushmi, Sankargarh, Balrampur and Wardraf Nagar. It is pleaded that from Wardraf Nagar, Kushmi & Shankargarh, there is no road connection with Ramanujganj, whereas, all these big villages/headquarters are easily connected by road to Ambikapur. Therefore, there was a propriety for opening the office of Ramanujganj Education District at Ambikapur itself, which is the District headquarters. The further allegations are that on behest of the former Central State Minister, a demand was raised that the said office should be shifted to Ramanujganj and the Government took the decisions for shifting the same. It has further been pleaded that the above decision was with a malafide intention and ulterior motive as it was against the prevailing geographical position and the convenience of the people at large. The shifting is not in public interest and it is totally illegal, malafide, arbitrary, most unfair and unjust, besides, most unreasonable and causing inconvenience to the employees and public at large. It has further

been pleaded that such shifting will result in civil consequence, therefore, an opportunity of hearing was a must and no opportunity of hearing has been given to the members of the petitioners, which is violative of Principles of natural justice.

(3) The return has been filed on behalf of respondents No. 1 to 4 & 6. Besides challenging the *locus standi* of the Union, answering respondents took a plea that it is the discretion, sweet will and subjective satisfaction of the State Government to take the decision in accordance with the administrative exigencies and in the public interest that where a particular office be established. The School Education Department has its own convenience and difficulties and therefore, the State Government has decided to establish office at those places, which are suitable to it and on this basis, the office has been transferred to Ramanujganj. They also pleaded that in Ambikapur, there is office of Dy. Director, School Education of Sarguja as well as of Ramanujganj, therefore, the State Government decided that the office of Ramanujganj, which was there at Ambikapur should be at Ramanujganj itself. They have specifically pleaded that there are 4 Educational Districts in Sarguja Revenue District (as it then was) i.e. Baikuthpur, Surajpur, Ambikapur and Ramanujganj and the headquarters of the Education District of Baikunthpur is at Baikunthpur, of Surajpur is at Surajpur and of Ambikapur is at Ambikapur but headquarters of Ramanujganj was at Ambikapur and considering that Ramanujganj is at a distance of 110 Kms. from Ambikapur, therefore, the administrative exigencies and public interest do require that the office of the Dy. Director of School Education Ramanujganj be also placed at Ramanujganj from Ambikapur as in comparison to Surajpur, Ambikapur and Baikuthpur. As further pleaded, the petitioners cannot question the jurisdiction of the State Government in opening the office of their department in accordance with the administrative exigency, in public interest and for proper functioning of the office in accordance with their convenience.

(4) Learned counsel for the petitioners raised similar points, which have been pleaded in the petition. His main contention was that the policy decision taken by the Government for shifting of the office from Ambikapur to Ramanujganj is not in public interest, besides being malafide, arbitrary, unjust and unfair.

(5) On the other hand learned counsel for the State argued that the Government policy is not subject to judicial review unless it is demonstrably, arbitrary, capricious, irrational, discriminatory or voilative of constitutional or statutory provisions.

(6) I have heard the learned counsel for the parties at length and have also perused the records of the writ petition.

(7) The first question is about the ***doctrine of judicial review*** particularly with reference to the policy decision. In the matter of ***Asif Hameed and Others –Vs- State of Jammu and Kashmir and Others, 1989 Supp. (2) SCC 364***, the Apex Court held that although the doctrine of separation of powers has not been recognized under the Constitution in its absolute rigidity but the Constitution makers have meticulously defined the functions of various organs of the State. Legislature, executive and judiciary have to function within their own spheres demarcated under the Constitution. No organ can usurp the functions assigned to another. Legislature and executive, the two facets of people's will, have all the powers including that of finance. Judiciary has no power over sword or the purse; nonetheless it has power to ensure that the aforesaid two main organs of State function within the constitutional limits and if it is not so the court must strike down the action. It is the sentinel of democracy. Judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive. The expanding horizon of judicial review has taken in its fold the concept of social and economic justice. While exercise of powers by the legislature and executive is subject to judicial restraint, the only check on court's own exercise of power is the self-imposed discipline of judicial restraint. While exercising power of judicial review of administrative action, the court is not an appellate authority. The Constitution does

not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers.

(8) Further in the matter of ***M.P. Oil Extraction and Another – Vs- State of M.P. and Others, (1997) 7 SCC 592***, the Apex Court again held that the executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the State. Policy decision is in the domain of the executive authority of the State and the Court should not embark on the uncharted ocean of public policy and should not question the efficacy or otherwise of such policy so long the same does not offend any provision of the statute or the Constitution of India. The supremacy of each of the three organs of the State i.e. legislature, executive and judiciary in their respective fields of operation needs to be emphasized. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in outstepping its limit by unwarranted judicial activism. The democratic set-up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields.

(9) Therefore, it is clear that in welfare State like ours, unless the action/decision of the Government is unconstitutional or contrary to statutory provisions or arbitrary, irrational, or is abuse of power or

discriminatory, the same cannot be interfered by High Court under writ jurisdiction under Article 226 of the Constitution of India and the supremacy of each of the three organs of the State i.e. legislature, executive and judiciary in their respective fields of operation needs to be emphasized.

(10) It is not for the court to determine whether a particular policy or a particular decision taken in furtherance of that policy is fair. The court is only concerned with the manner in which the decision was taken. When it appears to the court that there was no colourable exercise of power or no question of bias or *mala fide* with regard to it, the court has no jurisdiction to interfere with policy decision of the Government. The High Court under its judicial review would not examine merits and demerits or the policy, particularly speaking, it is not normally within the domain of High Court to weigh the pros and cons of a policy or to assess it to test the degree of beneficial or equitable effect for the purpose of varying, modifying or annulling, based on however sound and good reasons, except on the exception of arbitrariness or voilative of constitutional, statutory or any other provisions of law as indicated above. The court cannot compel the Government to change its policy.

(11) In the present case, the petitioners Union have taken stand of malafides and arbitrariness in change of headquarters from Ambikapur to Ramanujganj but they have not pleaded in specific words as to how the decision is arbitrary. Merely connectivity and geographical situation of a particular place would not be a factor to determine the arbitrariness. Rather approach should be that on the basis of geographical situation, only, a policy which is good in all respects and which is in the interest of the people at large should not frustrate. Would it be good that the headquarters of a District (may be the Educational District or Revenue District) should be allowed to remain out of the area of that District? Normally, the headquarters must be in the area of the District with a choice of place in the hands of the Government. Situation defers when a new District is opened. For want of infrastructure and for many other reason, a temporary

arrangement can be made by the Government but ultimately, the headquarters has to be shifted to the District of which it happens to be the headquarters. In the present case, the Education District of Ramanujganj was constituted in the year 1976 and at that time, the headquarters was fixed at Ambikapur and after a very long period in the year 1991 i.e. 11.7.91, the Government took a policy decision to shift the headquarters at Ramanujganj itself. In above facts and circumstances of the case, the action of the Government cannot be held to be malafide, arbitrary or irrational.

(12) In the present case, the plea has not been taken that the action of the Government was unconstitutional or contrary to the statutory provisions. The plea of arbitrariness, irrationality and unfairness has been taken, which is mainly based upon the geographical situation and connectivity of the area. Even that ground is not available. The judicial notice has been taken, which shows that presently the connectivity of Ramanujganj is equally good as that of Ambikapur. A regular Civil Court is functioning at Ramanujganj, the Court of Additional District & Sessions Judge is also at Ramanujganj, the Court of Sub-Divisional Officer is also there and other offices of the Government are also functioning in their usual manner and in the facts and circumstances, it would not be proper to hold that on account of connectivity as also on account of geographical situation, it would not be in public interest or it would be inconvenient to public at large while shifting the Educational District Office from Ambikapur to Ramanujganj. Therefore, the ground of arbitrariness, irrationality, unfairness and unreasonableness are not available to the petitioners.

(13) The petitioners have also taken the ground of civil consequences, I fail to understand as to how the shifting of the office from Ambikapur to Ramanujganj may lead to civil consequences and for that an opportunity of hearing was required to be given to the members of the petitioners. The grounds taken are totally misconceived. Unless the action is shown to be against the provisions of the Constitution, or the statute or against the provisions of law (Act or Rules), shifting of the headquarters of an office from a

particular place to its own area never lead to civil consequences giving a right of opportunity of hearing to a party.

(14) Change in policy can defeat a substantive legitimate expectation if it can be justified on ***Wednesbury reasonableness***. The decision maker has the choice in balancing the pros and cons relevant to the change in policy. The legitimate substantive expectation merely permits the court to find out whether the change in policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made. The judgment whether public interest overrides substantive legitimate expectation of individuals will be for the decision maker who has made the change in policy and the courts will intervene in that decision only if they are satisfied that the decision is irrational or perverse.

(15) I do not find any substance in the arguments advanced by the learned counsel for the petitioners, the petition has no merits, the same deserves to be dismissed and is accordingly dismissed.

(16) In consequence, the order of stay granted on 29.11.91 staying the effect and operation of the impugned order dated 11.7.91 (Annexure-P/9) stands vacated. The Government is free to act upon its policy decision as per said order dated 11.7.91.

(17) There shall be no order as to costs.

Sd/-
Sunil Kumar Sinha
Judge

vatti